

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

VERNON R. SIMS

:

v. : Civil Action No. DKC 11-1935

:

MICHAEL J. ASTRUE

:

MEMORANDUM OPINION AND ORDER

On December 3, 2009, Plaintiff Vernon R. Sims, by counsel, filed a complaint for judicial review of a decision issued by Social Security Commissioner Michael J. Astrue ("Defendant"), denying Plaintiff's application for supplemental security income benefits. (Civ. No. JKS 09-3195, ECF No. 1). Upon consent of the parties, the case was referred to United States Magistrate Judge Jillyn K. Schulze for all further proceedings. On March 29, 2011, Judge Schulze issued a memorandum opinion and order granting summary judgment in favor of Defendant. (*Id.* at ECF Nos. 30, 31). On May 10, 2011, Plaintiff, proceeding *pro se*, mailed to the clerk a handwritten document indicating his desire "to file an appeal in federal court for social security disability appeal." (Civ. No. WMN 11-1302, ECF No. 1). Because this document did not reference Plaintiff's existing case number or specify the order from which he sought to appeal, it was docketed by the clerk as a complaint under a new case number.

Due to further misunderstandings, which need not be recounted here, the instant case was commenced on July 14, 2012. The Government filed the pending motion to dismiss on November 4. (Civ. No. DKC 11-1935, ECF No. 11).

The record clearly reflects that Plaintiff intended that the May 10 document erroneously filed in Civ. No. WMN 11-1302 would be filed as a notice of appeal to the United States Court of Appeals for the Fourth Circuit in his prior case.

Accordingly, it is this 27th day of February, 2012, by the United States District Court for the District of Maryland, ORDERED that:

1. The clerk is directed to docket the filing found in Civ. No. WMN 11-1302, ECF No. 1, in Civ No. JKS 09-3195 as a Notice of Appeal from Judge Schulze's order of March 29, 2011, and that such notice be deemed filed as of May 10, 2011;

2. Plaintiff is directed to notify the court no later than March 19, 2012, if he wishes to continue the instant case as a new administrative appeal. If so, he must respond to the Government's motion to dismiss. Failure to respond will result in dismissal of this case without further notice; and

3. The clerk is directed to transmit a copy of this Memorandum Opinion and Order to counsel for the Government and directly to Plaintiff.

/s/
DEBORAH K. CHASANOW
United States District Judge